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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

H. VAUGHN HEATH, Plaintiff, vs. PHH MORTGAGE CORPOATION, GMAC MORTGAGE CORPORATION MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, Defendants,	**COMPLAINT** (JURY DEMAND) Civil No. Hon.

Plaintiff, H. Vaughn Heath, by and through counsel, Jeremy Rogers complains of defendants, and for cause of action alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Plaintiff H. Vaughn Heath is an actual citizen of Utah, whose address is 10217 South Dimpleview Lane Sandy, Utah 84092.

2. Defendant Bank, FHH Mortgage Corporation (hereafter “FHH Mortgage Corporation”) is a Maryland corporation, with its principle place of business in New Jersey. Defendant Bank purports to be the first position successor beneficiary of the Trust Deed, Exhibit “A” hereto.

3. Defendant Bank, GMAC Mortgage Corporation (hereafter “GMAC Mortgage Corporation”) is a Delaware corporation, with its principle place of business in Minnesota. Defendant Bank purports to be the second position successor beneficiary of the Trust Deed, Exhibit “B” hereto.

4. Defendant Mortgage Electronic Registration Systems hereafter “MERS” is a Delaware corporation registered to do business in the State of Utah, but without a registered agent in the domicile of the State of Utah. MERS principle place of business is Virginia and its corporate offices located at 1818 Library Street, Suite 300, Reston, Virginia 20190, and at all time relevant herein was doing business in the State of Utah. Defendant MERS purports to be the original first position beneficiary of the Trust Deeds, Exhibit “A” and “B” hereto.

5. The amount in controversy exceeds $75,000.00 exclusive of interest and costs.

6. The court has jurisdiction of this action pursuant to 28 USC §2201, §78B-6-401 et seq.(declaratory judgment) and §78B-6-1301 et seq. (quiet title), Utah Code Ann. 1953., and 28 USC §1332 (a).This court also has, pursuant to 28 U.S.C. § 1367, supplemental jurisdiction over all other claims that are so related to claims in this action that they form part of the same case or controversy under Article III of the United States Constitution.

7. Venue is proper in the Central Division of the United States Court for the District of Utah, pursuant to 28 U.S.C. § 1391(c).

BACKGROUND FACTS

8. Plaintiff is the owner of the property located at 10217 South Dimpleview Lane Sandy, Utah 84092 in Salt Lake County (hereinafter “the subject property”), under a deed thereto recorded on October 26, 2007 Entry #10259715 (see attached Exhibit “A”) in the Salt Lake County Recorder’s Office.

9. On or about October 26, 2007, Plaintiff executed the Promissory Note (hereinafter "the first position Note") in favor of Axiom Financial, LLC. Defendant, FHH Mortgage Corporation purports to be the original first position lender. On information and belief the original of said Note was then retained by Axiom Financial, LLC.

10. On or about October 26, 2007, Plaintiffs made and delivered the Deed of Trust (hereinafter "the first position Trust Deed"), conveying the subject properties in trust for the purposes recited therein Integrated Title Insurance Services, LLC as Trustee.

11. Said first position Trust Deed names as Beneficiary of said Trust Deed Mortgage Electronic Registration System, Inc. (hereinafter "MERS") acting solely as nominee for Lender and Lender's successors and assigns, and the successors and assigns of MERS.

12. MERS is a private corporation that administers the MERS system, a national electronic registry that tracks the transfer of ownership interests and servicing rights in mortgage loans. Through the MERS system, MERS purports to become the mortgagee of record for participating members through assignment of the members interests to MERS. MERS is listed as the grantee in the official records maintained at county recorder's offices. The lenders initially retain the loan obligations as well as the servicing rights to the mortgages. The lenders can then sell these interests to investors.

13. The first position Trust Deed recites that the beneficiary of this security instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS and

> "Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's

successors and assigns) has the right to exercise any or all of these interests, including, but not limited to, the right to foreclose and sell the property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument."

14. On or about October 24, 2007, Plaintiff executed the Promissory Note (hereinafter "the second position Note") in favor of Axiom Financial, LLC. Defendant, GMAC Mortgage Corporation purports to be the original first position lender. On information and belief the original of said Note was then retained by Axiom Financial, LLC.

15. On or about October 24, 2007, Plaintiff made and delivered the Deed of Trust (hereinafter "the second position Trust Deed"), conveying the subject properties in trust for the purposes recited therein integrated Title Insurance Services, LLC as Trustee.

16. Said second position Trust Deed names as Beneficiary of said Trust Deed Mortgage Electronic Registration System, Inc. (hereinafter "MERS") acting solely as nominee for Lender and Lender's successors and assigns, and the successors and assigns of MERS and continues to recite the same language as the first position Trust Deeds

17. A Servicer was designated by FHH Mortgage Corporation and GMAC Mortgage Corporation for the loans ("Servicer") to act as there representative/agent for the holders of the respective Notes and the corresponding Trust Deeds.

18. Upon information and belief, Defendant Banks FHH Mortgage Corporation and GMAC Mortgage Corporation (hereafter "Lenders") in the foregoing transactions were provided a line of credit by undisclosed warehouse lenders, pending pooling of the first and second position Notes (hereinafter "Notes") with other such instruments, and sale of the pooled instruments as securities to unknown investors.

19. Upon information and belief, the Lenders have been reimbursed all sums advanced by each of them in connection with the Notes.

20. Upon information and belief, the Lenders function was limited to obtaining their respective Notes, in exchange for a fee, as a preliminary step to "securitization" of debt as described herein.

21. Upon information and belief, the debts were pooled with similar debts pursuant to a Pooling and Servicing Agreement between Lenders and Bank, in which Bank purported to act as Trustee of a Trust created hereby, for the purpose of selling such debts as securities to investors, and appointing "servicers" of the pooled loans, and as a custodian of the Notes evidencing the debts and sold by Lenders and/or a person or persons unknown as securities to numerous investors unknown.

22. Upon information and belief, such investors and/or the person or persons unknown who sold such securities have obtained insurance against default on the underlying obligations in the form of "credit default swaps" or other similar instruments.

23. Notwithstanding the transfer of the obligation under said Notes as herein described, no transferee thereof has recorded a copy of any security agreement providing any security interest in either the first position Trust Deeds or the second position Trust Deeds (hereinafter "Trust Deeds") or any appropriate affidavits, pursuant to Section §70A-9a-607(2), Utah Code Ann.1953, in order to perfect any right of enforcement under §70A-9a-607(1), Utah Code Ann. 1953.

24. As a result of the transfer of the Notes as part of these securities transactions, and of the lack of such recordings, Lenders and defendants are not the present owners of the debts under the respective Notes or the obligees thereon. Named defendants, or one of them, are a mere

custodian of the Notes for others. Plaintiffs, and, upon information and belief, defendants, do not know who is or are the present owners of the respect debts evidenced by the Notes, or the obligees thereon.

25. Defendants or one of them is a mere custodian of the Notes for others.

26. The first position and second position Trust Deeds were not assigned or transferred of record in whole or in part.

27. Plaintiffs having a right under the Notes and federal law to do so, demanded of Servicers, who purport to have a relationship in the nature of agency with persons to whom the Notes and/or Trust Deeds may be assigned, and/or persons in fiduciary relationships to such assignees, all information and records showing transfer of such Notes to any person or persons, for the purposes, among others, of determining the proper person(s) to receive payments under the Notes, or to negotiate payment or reinstatement of the debt, or to obtain acknowledgment of proper application of payments. No qualified response was provided.

FIRST CAUSE OF ACTION: ESTOPPEL/ DECLARATORY JUDGMENT

28. Plaintiffs incorporate herein by reference paragraphs 1-27 hereinabove.

29. The Servicers of the respective Notes purport in the Trust Deeds to have a relationship in the nature of agency with persons to whom the Notes and/or Trust Deeds may be assigned, and/or persons in fiduciary relationships to such assignees.

30. By permitting the respective Servicers to so represent their respective capacities, both the first and second position defendant Beneficiaries (hereinafter “defendant Beneficiaries”) and any respective assignees have conferred upon each respective Servicer the right and obligation to disclose and assert the interests of such assignees as necessary to protect such interests.

31. The refusal of the Servicers, upon demand, to disclose such interests is binding upon

their respective assignees.

32. The result of such behavior by Servicers, defendant Beneficiaries, and such assignees, is to subject borrowers and their successors in title, to risks, abuses, and prejudice, and to render impossible proper discharge of the obligations on the Notes.

33. As a result of such behavior, defendant Beneficiaries, and such assignees, including those served by publication herein, are estopped to assert any present default on the Notes, or power of sale under the Trust Deeds.

34. An actual controversy exists between Plaintiffs and defendants regarding the amenability of the subject properties to sale by defendants, which may be resolved by the Court pursuant to 28 USC §2201, §78B-6-401, et seq., Utah Code Ann. 1953 (Supp. 2008).

35. The Court should appropriately advance this matter on the calendar as provided by Rule 57, F.R.C.P., and promptly enter its Order declaring that defendants, lack any interest under the Trust Deeds which may be enforced by lien upon or sale of the subject properties.

SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT

36. Plaintiffs incorporate herein by reference paragraphs 1-35 hereinabove.

37. The Bank is not a Trustee of any existing Trust, and Defendants, the Servicers and defendant Beneficiaries:

a. did not know whether a default had occurred, or had been declared by the actual owners of the debts evidenced by the Notes;

b. lacked authority to declare a default or otherwise pursue collection of the debts evidenced by the Notes;

c. lacked authority to sell the subject properties or to distribute any proceeds thereof;

d. was not entitled to any of such proceeds on their own account;

e. could not give trustee's deeds which were free and clear of the debts evidenced by the Notes;

f. could not give an enforceable release of the Trust Deeds.

38. In the event that any investor in the debt evidenced by the Notes, or any assignee of an interest in the Notes, did not obtain assignment of the Trust Deeds, the obligation under the Notes, has to that extent, become unsecured, and the Notes and Trust Deeds, may not be foreclosed.

39. Plaintiffs, at any time relevant hereto, by diligent search or otherwise, could not have discovered, without the assistance of Servicers and, consequently, the named defendants, the identities of any assignee of any interest in the Notes or Trust Deeds, or the present holders(s) of the Notes, or the interest of such person as a result of any such assignment. Plaintiffs were thereby prevented from properly discharging the obligations under the Notes.

40. An actual controversy exists between Plaintiffs and defendants regarding the amenability of the subject properties to sale by defendants, which may be resolved by the Court pursuant to 28 USC§2201, §78B-6-401, Utah Code Ann. 1953.

THIRDCAUSE OF ACTION: QUIET TITLE

41. Plaintiffs incorporate herein by reference paragraphs 1-40 hereinabove.

42. The transfer of the Notes as part of securities, subjects Plaintiffs to potential multiple and unpredictable recoveries or attempts to recover, against the subject properties.

43. The failure of Beneficiaries and Trustee to retain any interest in the obligations under the Notes voided any title or power they might have under the Trust Deeds, and rendered the Trust Deeds unenforceable by them.

44. The inability of Plaintiffs to safely discharge any lien of the Trust Deeds against the subject property in favor of assignees of interests in the Notes and Trust Deeds, and the threat of multiple recoveries or attempts to recover against the subject properties constitute a cloud on Plaintiffs' title which can only be removed by requiring all such assignees to appear and assert their interests and the extent to which any obligation owing to them has not been discharged by payment, including collections on insurance against default, or, failing such assertion of claims, entry of a decree of quiet title freeing the subject properties from the liens of such obligations.

45. The Court, pursuant to §78B-6-1301 et seq., Utah Code Ann (1953) (Supp. 2008), should enter its Order herein forthwith quieting title to the subject properties in Plaintiffs and against defendants, freeing title to the subject properties of the liens of the Trust Deeds and leaving any obligations under the Notes unsecured by any interest in the subject property.

FOURTH CAUSE OF ACTION: REFUND, FEES AND COSTS

46. Plaintiffs incorporate herein by reference paragraphs 1-45 hereinabove.

47. The Trust Deeds has been unenforceable by defendant Beneficiaries and Trustee from the first transfer of the Notes as set out hereinabove.

48. Defendant Beneficiaries' and Trustee's pretenses of authority to foreclose, or attempt to foreclose, under the Trust Deeds were fraudulent.

49. Defendant Beneficiaries' assertions to the Court herein that it holds and is entitled to enforce the obligations of the Notes would constitute a fraud upon the Court, subjecting defendants to sanctions and imposition of fees and costs under §78-5-825, U.C.A. (1953).

50. The Court should enter its Order herein forthwith to Defendant Beneficiaries, jointly and severally, to pay to Plaintiffs its fees and costs, together with a reasonable attorney's fee, to be

shown by affidavit, and to reimburse to Plaintiffs unnecessary fees and charges under the Notes and Trust Deeds.

Wherefore, Plaintiffs prays that the court enter its Order herein:

1. Declaring that Defendant Beneficiaries lack any interest in the subject properties which permitted them to foreclose, or attempt to foreclose, the Trust Deeds and/or to sell the subject properties; and

2. Declaring that the Trust Deeds are not liens against the subject properties, ordering the immediate release of the Trust Deeds of record, and quieting title to the subject properties in Plaintiffs against defendants and all claiming by, through, or under them;

3. Refunding to Plaintiffs from Defendant Beneficiaries, jointly and severally, all fees and charges paid under the Trust Deeds, and awarding Plaintiffs its cost of the action, including a reasonable attorney's fee; and

4. For such other and further relief as the court deems just in the premises.

RESPECTFULLY submitted on June 28, 2010.

/s/ Jeremy Rogers

Jeremy Rogers, Attorney for Plaintiff